



State of California
Franchise Tax Board

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Disaster Loss How to Claim a State Tax Deduction for Your Disaster Loss

This publication is designed to help you with financial recovery and explains how you can claim your financial loss as a deduction on your California tax return. You can find information specific to your disaster on page 6 of this publication or our publication series, California Disaster Relief Tax Provisions (FTB Pub. 1034A series).

Casualty and Disaster Losses

California law generally follows federal law regarding the treatment of losses incurred as a result of a casualty or a disaster. To qualify as a disaster loss for federal purposes, the President of the United States must declare the area in which the disaster occurred as a disaster area, eligible for federal assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. This includes a major disaster or emergency declaration under the Act. A pronouncement by the Governor of California declaring an area as a disaster or emergency area is not enough to qualify as a disaster loss for federal purposes.

A casualty loss occurs when you lose or damage your property due to an earthquake, fire, flood, or similar event that is sudden, unexpected, or unusual. You usually qualify for a casualty loss deduction for tax purposes when insurance or other reimbursements do not repay you for damage to your property. For California purposes, your casualty loss becomes a disaster loss when both of the following occur:

- You sustain the loss in an area the President of the United States or the Governor of California designates as a disaster area. (Note: If only the Governor declares a disaster, subsequent state legislation is required to activate the disaster provision for California tax purposes.)
- You sustain the loss because of the declared disaster.

Special tax rules apply to disaster losses. You can claim a disaster loss in the taxable year the disaster occurred or in the taxable year immediately before the disaster occurred. The advantage of claiming a disaster loss in the prior year is that the loss will generally reduce the prior year tax liability generating a refund that the Franchise Tax Board (FTB) can quickly issue.

Claiming a Disaster Loss on an Amended Tax Return

If you have already filed your return for the preceding year, you can claim a disaster loss against that year's income by filing Form 540X, Amended Individual Income Tax Return.

For example, you sustained a disaster loss in March 2008. You can claim the loss on your 2008 return when you file it by April 15, 2009, or claim the loss immediately on your 2007 return. If you already filed your 2007 return, complete Form 540X. You must make the election to claim the loss on your 2007 return by April 15, 2009 (the original due date for the 2008 tax return), unless California passes subsequent legislation extending the option until the October 15 extended due date. For more information, see page 3, When to Claim Your Disaster Loss.

Special Disaster Loss Carryover Rules

You may also qualify to carry over any excess losses for up to 15 years if subsequent California legislation identifies your disaster for the special carryover treatment. The California disaster provisions (R&TC 17207 and 24347.5) allow disaster victims to carryover 100 percent of the excess loss for up to five years.

For taxable years 2004 and after, you can deduct any remaining excess losses at 100 percent for up to 15 years.

For disaster losses incurred in prior taxable years, you can deduct any excess loss that remains after the five-year period for up to 10 more years at the following percentage rates:

| Percentage Allowed to Carry Over | For Disasters incurred in Taxable Year |
|----------------------------------|--|
| 60 | 2002 and 2003 |
| 55 | 2000 and 2001 |
| 50 | 1999 and before |

You cannot use disaster losses in computing a net operating loss deduction under Internal Revenue Code Section 172. If you have both disaster loss carryovers and net operating loss carryovers, you must use them in the order you incurred them.

Taxpayers should complete form FTB 3805V, Net Operating Loss (NOL) Computation and NOL and Disaster Loss Limitations – Individuals, Estates, and Trusts, for the year of loss to compute the carryover.

How to Calculate a Disaster Loss

Compute your tax loss on your federal tax return and transfer that loss amount to your California return. In some cases, you may need to make adjustments between state and federal tax laws on your California return.

Individuals

Calculate your disaster loss by reporting California amounts on IRS Form 4684, Casualties and Thefts, Section A - Personal Use Property, and submitting this form with your California tax return. You will also need to attach a statement providing the date and location of the disaster (city, county, and state).

Determine your personal loss by using the smaller of the decrease in the fair market value of your property due to the casualty or the adjusted basis of the property. Fair market value means the amount at which property would change hands between a willing buyer and seller. Adjusted basis generally means what you paid for the property plus the cost of any improvements, less deductions such as depreciation. To determine your allowable loss, deduct insurance proceeds or other reimbursement you received or expect to receive. Next, subtract \$100 and then 10 percent of your federal adjusted gross income. Claim the remaining amount as your casualty or disaster loss.

Businesses

Calculate your disaster loss by reporting California amounts on IRS Form 4684, Casualties and Thefts, Section B - Business and Income Producing Property.

Determine your business loss by using the smaller of the decrease in the fair market value of your property due to the casualty or the adjusted basis of the property. To determine the allowable loss, deduct insurance or other reimbursement you received or expect to receive.

Federal Postponement Periods

California automatically follows federal postponement periods as announced by the Internal Revenue Service (IRS). The IRS may postpone for up to one year certain tax deadlines of taxpayers affected by a Presidentially declared disaster. Tax deadlines subject to postponement include those for filing tax returns, paying income taxes, and making contributions to a traditional IRA or Roth IRA. The IRS and the FTB may cancel the interest and penalties on underpaid income tax for the length of any postponement deadlines.

If the IRS postpones a tax deadline, the following taxpayers are eligible for the postponement:

- Any individual whose main home is located in a covered disaster area.
- Any business whose principal place of business is located in a covered disaster area.
- Any relief worker affiliated with a recognized government or philanthropic organization and who is assisting in a covered disaster area.
- Any individual or business whose records are needed to meet a postponed deadline, provided those records are maintained in a covered disaster area. **Note:** The main home or principal place of business does not have to be located in the disaster area.
- Any estate or trust that has tax records needed to meet a postponed tax deadline, provided those records are maintained in a covered disaster area.
- The spouse on a joint return with a taxpayer who is eligible for postponements.
- Any other person determined by the IRS to be affected by a Presidentially declared disaster.

Disasters Outside of California

If you meet the qualifications to claim a disaster loss anywhere within the United States and have a California tax-filing requirement (resident or nonresident), the same disaster rules and postponement periods automatically apply to you. Be sure you indicate on your tax return the name and date (in red at the top of your return) of which disaster you are claiming a loss.

Documentation You Must Attach to your California Return

To report your losses, you may need the following California forms:

- Schedule D-1, Sales of Business Property.

- Form FTB 3805V, Net Operating Loss (NOL) Computation and NOL and Disaster Loss Limitations – Individuals, Estates, and Trusts.
- Form FTB 3805Q, Net Operating Loss (NOL) Computation and NOL and Disaster Loss Limitations – Corporations.

You must also include these IRS forms in your disaster loss documentation:

- A completed IRS Form 4684, Casualties and Thefts (use California amounts).
- A copy of your IRS Form 1040, U.S. Individual Income Tax Return, or 1040X, Amended U.S. Individual Income Tax Return.
- A copy of your IRS Form 1120, U.S. Corporation Income Tax Return, or 1120X, Amended U.S. Corporation Income Tax Return.
- Any supporting IRS schedules that verify your deduction.

You must attach a clearly written statement to your loss documentation that indicates:

- The date of the disaster.
- The location of the disaster (city, county, and state).
- If you choose, your decision to deduct the loss in the taxable year before the year the disaster occurred.

It is a good idea to take and keep photos of the damaged property to document the loss.

For filing deadline dates specific to your disaster, refer to the table below or to California Disaster Relief Tax Provisions (FTB Pub. 1034A series).

When to Claim Your Disaster Loss

The deadlines for electing a prior year deduction versus claiming your loss on the current year are:

Personal Returns:

| Year of Loss | Prior Year Return | Current Year Return |
|--------------|--|-------------------------------|
| | 2005 | 2006 |
| 2006 | Claim on original or amended 2005 tax return by April 15, 2007.* | Claim on the 2006 tax return. |
| | 2006 | 2007 |
| 2007 | Claim on original or amended 2006 tax return by April 15, 2008.* | Claim on the 2007 tax return. |
| | 2007 | 2008 |
| 2008 | Claim on original or amended 2007 tax return by April 15, 2009.* | Claim on the 2008 tax return. |

*If subsequent California legislation passes extending the option, then the due date is extended until October 15th of the current year.

Corporation Returns:

| Year of Loss | Prior Year Return | Current Year Return |
|--------------|---|--------------------------------|
| | 2005 | 2006 |
| 2006 | Claim on original or amended 2005 tax return by the current year's extended due date, the 15th day of the third month after the close of the taxable year.* | Claim on 2006 tax year return. |
| | 2006 | 2007 |
| 2007 | Claim on original or amended 2006 tax return by the current year's extended due date, the 15th day of the third month after the close of the taxable year.* | Claim on 2007 tax return. |
| | 2007 | 2008 |
| 2008 | Claim on original or amended 2007 tax return by the current year's original due date, the 15th day of the third month after the close of the taxable year.* | Claim on 2008 tax return. |

*If subsequent California legislation passes extending the option, then the due date is extended until the 15th day of the tenth month after the close of the taxable year.

How to Replace California Tax Returns Lost or Damaged in a Disaster

If your returns are lost or damaged in a disaster, we will replace your California tax returns at no cost. Complete form FTB 3516, Request for Copy of Tax Return. Print the name of the disaster at the top of the form and we will send you copies of your most recently filed tax return.

Please send your request to the appropriate address listed below.

| For Personal Income Tax Returns: | For Business Entity Tax Returns: |
|---|--|
| RID UNIT PIT FRANCHISE TAX BOARD PO BOX 1570 RANCHO CORDOVA CA 95741-1570 | RID UNIT CORP FRANCHISE TAX BOARD PO BOX 1570 RANCHO CORDOVA CA 95741-1570 |

You can also request a copy of your lost or damaged return by writing us a letter that includes all of the following:

- Your name
- Your address
- Your social security number (for personal income tax returns)
- Your corporation number, California Secretary of State number, or federal employer identification number (for business entity tax returns)

- The tax year requested
- Your signature

Where to Get Forms to Claim Your Loss

You can access and print California tax forms and publications on our website at ftb.ca.gov.

You can also order forms by calling **800.338.0505**. To order personal income tax forms, select the personal income tax forms option and any of the following form codes when prompted:

- **900** – California Resident Income Tax Booklet (includes Form 540)
- **914** – California Nonresident Income Tax Booklet (includes Form 540NR)
- **908** – Form 540X, Amended Individual Income Tax Return
- **909** – Schedule D-1, Sale of Business Property
- **926** – Form FTB 3805V, Net Operating Loss (NOL) Computation and NOL and Disaster Loss Limitations - Individuals, Estates, and Trusts
- **937** – Form FTB 3516, Request for Copy of Personal Income Tax or Fiduciary Return

You can also order forms by calling **800.338.0505**. To order business entity tax forms, select business entities tax forms, and any of the following form codes when prompted:

- **816** – California S Corporation Tax Booklet (includes Form 100S)
- **817** – California Corporation Tax Booklet (includes Form 100)
- **817** – Form FTB 3805Q, Net Operating Loss (NOL) Computation and NOL and Disaster Loss Limitations – Corporations

Form 100X, Amended Corporation Income Tax Return is available only at our website.

Mailing Addresses for Disaster Loss Documentation

| Individual Taxpayers: | Business Taxpayers: |
|---|---|
| FRANCHISE TAX BOARD PO BOX 942867 SACRAMENTO CA 94267-0001 | FRANCHISE TAX BOARD PO BOX 942857 SACRAMENTO CA 94257-0501 |

Refunds

Our commitment is to quickly issue refunds to disaster victims.

If you electronically file your disaster loss tax return, you will receive your refund within 7 days if you choose to have it deposited directly into your bank account or within 10 days by mail. Follow your tax software instructions to enter the disaster information.

Note: E-filing works only if filing original return. Taxpayers that opt to amend previous year return must file via paper format.

You can also file paper returns. To help us process your refund quickly, use red ink to print the name of the disaster at the top of Side 1 of your California tax return (for example: DISASTER – 2008 CALIFORNIA WILDFIRES). We give these returns top priority and will process them as quickly as possible.

Information and Assistance on Claiming a California Disaster Loss

Internet and Telephone Assistance

Website: **ftb.ca.gov**
Telephone: 800.852.5711 from within the United States
916.845.6500 from outside the United States (not toll-free)
TTY/TDD: 800.822.6268 for persons with hearing or speech impairments

Asistencia Por Internet y Teléfono

Sitio web: **ftb.ca.gov**
Teléfono: 800.852.5711 Dentro de los Estados Unidos
916.845.6500 Fuera de los Estados Unidos (cargos aplican)
TTY/TDD: 800.822.6268 Personas con discapacidades de la audición y del habla

IRS Forms and Information

Common casualty or disaster forms and publications:

- Form 4684, Casualties and Thefts
- Publication 547, Casualties, Disasters, and Thefts (Business and Nonbusiness)
- Publication 584, Casualty, Disaster, and Theft Loss Workbook (Personal-Use Property)
- Publication 584B, Casualty, Disaster, and Theft Loss Workbook

To get forms and other tax information from the IRS you can access their website at **irs.gov**. You can also call the IRS at 800.829.1040. To get IRS forms by mail, call **800.TAX.FORM (800.829.3676)**.

Federal Emergency Management Agency (FEMA)

Call FEMA at **800.462.9029** to get a list of Disaster Recovery Centers in your area. You can access their website at **fema.gov**.

| Recent Disaster Loss Relief | | | | | | |
|--------------------------------|-----------------------|---|-----------------------------------|-------------------------------|---|--------------------------------------|
| Incident Period | Disaster | Counties | Federal Loss Throwback Election | State Loss Throwback Election | State Throwback Election Extension ¹ | 100% Disaster Loss 15 Year Carryover |
| November 2008 | Southern CA Wildfires | Los Angeles, Orange, Riverside, Santa Barbara | Yes | Yes | No | No |
| July 2008 | Severe Rainstorms | Inyo | No | Yes | Yes | Yes |
| July 2008 | CA Wildfires | Santa Barbara | No | Yes | Yes | Yes |
| May 2008 June 2008 | CA Wildfires | Butte, Humboldt, Kern, Mariposa, Mendocino, Monterey, Plumas, Santa Clara Santa Cruz, Shasta, Trinity | Yes | Yes | Yes | Yes |
| October 2007 | Wind Damage | Riverside | No | Yes | Yes | Yes |
| September 2007 October 2007 | Southern CA Wildfires | Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara, Ventura | Yes | Yes | Yes | Yes |
| July 2007 | Complex Fire | Inyo | No | Yes | Yes | Yes |
| June 2007 August 2007 | Wildfires | El Dorado, Santa Barbara, Ventura | No | Yes | Yes | Yes |
| January 2007 | Freeze | El Dorado, Fresno, Imperial, Kern, Kings, Los Angeles, Madera, Merced, Monterey, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Santa Clara, Stanislaus, Tulare, Ventura, Yuba | Yes, with exceptions ² | Yes | Yes, with an exception ³ | Yes, with an exception ³ |
| September 2006 October 2006 | Wildfires | Riverside, Ventura | No | Yes | Yes | Yes |

¹ The IRC §165(i) election is made by filing a return or an amended return on or before the later of:

- The due date of the return, without extensions, for the taxable year in which the disaster actually occurred; or
- The due date of the return, including extensions, for the tax year immediately preceding the tax year of occurrence. (Treas. Regs. §1.165-11(e))

For example, calendar-year individuals generally have until April 15, 2009, to amend their 2007 tax return to claim a disaster loss that occurred during 2008. However, if California legislature passes legislation that extends the election date, by listing the disaster in R&TC §17207 and §24347.5, the state throwback election may be made on or before the later of:

- The due date of the return, including extensions for the taxable year in which the disaster actually occurred; or
- The due date of the return, including extensions, for the tax year immediately preceding the tax year of occurrence.

² The President did not declare El Dorado, Santa Clara, and Yuba counties as major disaster areas. Therefore, disaster victims in these counties do not qualify for a federal loss throwback election.

³ The Legislature did not list Los Angeles County in R&TC §17207 or §24347.5 in any legislative bill as a qualifying disaster, even though the President declared it a major disaster. Therefore, disaster victims in Los Angeles County do not qualify for the extended date to make the loss throwback election, nor do they qualify for special disaster loss carryover treatment.